IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1777 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

AGRICULTURAL PRODUCE MARKET COMMITTEE
Versus
CHANDULAL MANALAL MODI AND OTHERS

==========

Appearance :
MR HS MUNSHAW for the applicant
MS PAURAMI SHETH, Asst Govt Pleader for Opponent Nos.3 - 5.

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 06/03/2006

ORAL JUDGMENT

By filing this civil revision application under Section 115 of the Civil Procedure Code, the petitioner – original defendant

No.4 has prayed that the judgment and order passed by the learned 2nd Joint Civil Judge (Senior Division), Godhra dated 13.08.1997 may be quashed and set aside. Respondents Nos.1 and 2 herein are the original plaintiffs of Regular Civil Suit No.67 of 1994.

2 The case of the plaintiffs as stated in the revision memo is that they are the owners of the land in question and that entries made in the revenue record are not binding to them as the said entries were posted without giving them any notices. The said suit was filed for a declaration and injunction challenging the land acquisition proceedings undertaken by the State. In the said suit an application Exhibit 37 was given by the present petitioner – original defendants that since the valuation of the subject matter is more than Rs.50,000, the suit was required to be transferred to the learned Civil Judge (Senior Division) as the said suit can be tried only by the learned Civil Judge (Senior Division).

3 The learned trial Judge rejected the said application on the ground that the plaintiff has filed the suit for a declaration and injunction with a prayer under under the Land Acquisition Act shall be treated as a null and void. The learned trial Judge after relying upon the decision of this Court, to which a reference has been made in his judgment, has held that when the proceedings under the Land Acquisition Act are challenged by way of declaratory suit, the court fee is required to be affixed as per Section 6(iv)(j) of the Bombay Court Fees Act. The learned trial Judge has also found that it was not necessary to treat the suit as a special suit.

4 Mr H.S.Munshaw, learned advocate for the petitioner is not in a position to make out any case as to how the order in question is bad. It is required to be noted that the suit is of the year 1994 and since there was no interim order even the suit must have been decided by this time. On behalf of the petitioner, it is fairly submitted that there is no interim relief which is granted by this Court. Considering the facts and circumstances of the case, the present revision application is not maintainable as it cannot be said that any jurisdictional error is committed by the trial Court. However, if the suit is still pending, it will be open to the defendant No.4 or any other defendant to raise this point in the pending suit about inadequacy of the Court fees. If any such issue is framed by the trial Court, it shall decide the same after considering the evidence of rival parties. The trial Court shall endeavour to decide the suit within a period of six months from the date of receipt of writ of this Court, if the same is still pending.

Subject to what is stated above, this revision application is disposed of. Rule is discharged with no order as to costs. Writ to be sent down forthwith.

(P.B.Majmudar, J.)

*mohd